

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MILES BRICE,	§
	§ No. 171, 2009
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0107007736
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 26, 2010

Decided: April 8, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 8th day of April 2010, upon consideration of the briefs on appeal and the record below, it appears to the Court that:

(1) The defendant-appellant, Miles Brice, filed an appeal from the Superior Court’s February 26, 2009 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61 and his motion for the appointment of counsel. We find no merit to the appeal. Accordingly, we affirm.

(2) In July 2001, the grand jury returned an indictment against Brice, charging him with two counts of Felony Murder in the First Degree, two counts of Attempted Burglary in the Second Degree, one count of

Attempted Murder in the First Degree, one count of Assault in the Second Degree, one count of Conspiracy in the First Degree, five counts of Reckless Endangering in the First Degree, and a number of related weapon offenses. Trial began on December 2, 2003.¹ The State presented evidence that, in July 2001, Brice and co-defendant Leon Caulk chased Forrest Green, with whom they had an ongoing feud, to Green's girlfriend's apartment. As Brice and Caulk tried to push their way into the apartment, Brice, who was carrying a semi-automatic handgun, fired 11 bullets through the door, killing the girlfriend instantly and wounding a 16 year-old boy, who died shortly after. Green was injured, but survived. Green's girlfriend was helping Green close the door and the 16 year-old boy was attempting to push Green's girlfriend away from the door when Brice fired the shots.

(3) On December 8, 2003, following the completion of the State's case-in-chief, Brice pleaded guilty to 2 counts of Felony Murder in the First Degree in exchange for which the State dismissed the remaining counts of the indictment and refrained from seeking the death penalty. Brice

¹ Between the indictment and trial, the Superior Court submitted certified questions of law to this Court regarding the constitutionality of Delaware's death penalty statute. The Court answered those questions in *Brice v. State*, 815 A.2d 314 (Del. 2003).

subsequently was sentenced to 2 life terms on those convictions.² Brice did not file a direct appeal from his convictions or sentences.

(4) In this appeal, Brice asserts several claims that may fairly be summarized as follows. His postconviction motion is governed by Rule 61(i)(5)'s "fundamental fairness" exception because a) he was unaware of this Court's interpretation of the felony murder statute³ under *Williams v. State*, 818 A.2d 906, 912-14 (Del. 2002) and, therefore, his guilty plea was involuntary; and b) his attorney provided ineffective assistance because he did not inform Brice of this Court's interpretation of the felony murder statute under *Williams*. Therefore, Brice argues, the Superior Court erred when it denied his postconviction motion as time-barred under Rule 61(i)(1).⁴

(5) When reviewing the Superior Court's denial of a postconviction motion, this Court must first consider the procedural requirements of Rule 61 before addressing any substantive issues.⁵ In this case, the Superior Court properly found that Brice's postconviction motion was time-barred

² Prior to trial, Brice also had pleaded guilty to one of the weapon offenses. He also was sentenced on that conviction to 5 years at Level V.

³ Del. Code Ann. tit. 11, §636(a)(2).

⁴ Under Rule 61(i)(5), the time bar imposed by Rule 61(i)(1) is inapplicable to a colorable claim of "a miscarriage of justice because of a constitutional violation that undermined the fundamental legality, reliability, integrity or fairness of the proceedings leading to the judgment of conviction."

⁵ *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

under Rule 61(i)(1) because it was filed more than 3 years after his convictions became final.⁶ Brice's claim that the "fundamental fairness" exception found in Rule 61(i)(5) applies to his case is premised on his contention that the State presented insufficient evidence to support a finding that the killings were carried out in order to "facilitate" his entry into the apartment to attack Green. If he had known that the State's evidence did not comply with this Court's ruling in *Williams*, Brice's argument goes, he would not have pleaded guilty.

(6) The record before us does not support Brice's contention. To the contrary, the record reflects that Green attempted to escape from Brice by fleeing into his girlfriend's apartment. Brice and Caulk then attempted to force their way into the apartment in order to attack Green. That action amounted to an attempted burglary.⁷ By recklessly shooting 11 times through the door, thereby killing two people, Brice intended to further the attempted burglary. As such, the State had more than sufficient evidence to support the felony murder charges against Brice, as required under *Williams*. Moreover, at the time Brice entered his guilty plea, he was completely aware of the State's evidence against him, since he had just sat through the State's

⁶ Effective July 1, 2005, a movant must file for postconviction relief within one year of his convictions becoming final.

⁷ Del. Code Ann. tit. 11, §§531 and 825.

case-in-chief. As such, there is no valid basis for Brice's contention that his guilty plea was involuntary.

(7) In order to prevail on his claim of ineffective assistance of counsel in connection with his guilty plea, Brice must demonstrate that his attorney's actions were professionally unreasonable and that, but for his attorney's errors, he would not have pleaded guilty, but would have insisted on continuing with trial.⁸ There is no record support for Brice's claim that his counsel committed error by advising him to plead guilty. Not only had the State presented sufficient evidence in its case-in-chief to support the felony murder charges against Brice, Brice's plea bargain provided him with a significant benefit in that the State would no longer be pursuing the death penalty. As such, Brice's claim of ineffective assistance of counsel is unavailing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.⁹

BY THE COURT:

/s/ Carolyn Berger
Justice

⁸ *Albury v. State*, 551 A.2d 53, 58-59 (Del. 1988).

⁹ We also find no abuse of discretion on the part of the Superior Court in denying Brice's request for the appointment of counsel. To the extent that Brice has requested this Court to appoint counsel to represent him in this appeal, that request is hereby denied as moot.